IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 977

ROBERT E. FUNKHOUSER, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

ROBERT E. FUNKHOUSER,
Pro se,
Davidsonville, Maryland.

May 12, 1962.

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Petitioner, Robert E. Funkhouser, petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Fourth Circuit, entered on March 27, 1962, affirming an order of the District Court for the District of Maryland. Petitioner's petition for rehearing was denied on April 13, 1962.

OPINIONS BELOW

The opinion of the District Court dated October 18, 1961 is printed as (E. 76-82) and it is reported at 198 F. Supp. 708 (District of Md. 1961). Affirmed March 27, 1962. Rehearing denied April 13, 1962. (App. 1a)

JURISDICTION

Case No. 8094 was combined with Case No. 8498 in the Court of Appeals and the decision of the Court was entered on March 27, 1962. A petition for rehearing was denied on April 13, 1962. (App. 3a)

Case No. 8552 was decided on March 27, 1962 and rehearing was denied on April 13, 1962. The three cases involve the same subject, were heard at the same time and decided at the same time. (App. 1a, 2a, 3a, 4a)

THE QUESTIONS PRESENTED

1. Did the Courts below so far depart from the accepted and usual course of judicial procedure, or so far sanction such departure as to call for an exercise of this Court's power of supervision?

2. Did the rules, procedure and practice of the lower court, and the enforcement of those rules and procedures deny to this petitioner due process of law?

3. Did the local rules of the lower court and the refusal, return, rejection, and withholding of important papers from the District Court Records deny due process of law to this petitioner?

STATUTES INVOLVED

The statutory provisions involved are Sections 41, 51, 54, 57, 271, 272 and 145(b) of U.S.C. Title 26. They are printed as pages 7-8 in Petitioner's Brief Case No. 8094.

STATEMENT OF FACTS

There is no dispute about the facts in these cases. The facts are all clearly stated by respondent and by the Court in the record, and as stated by respondent and by the court they show injustice and denial of due

process of law by the application of unjust rules and procedures from the beginning of this case.

The facts set out by respondent show that this petitioner complied with all of the requirements of the Internal Revenue Law of 1939 (Sec. 41, 51, 54) when he kept the required books and records and made and filed income tax returns in which he reported all gross income and all expenses. The facts are admitted by respondent and stated by the Court as follows:

> By Respondent: He (petitioner) reported gross income of approximately $360,000 upon which he paid total taxes of $235. (Brief for appellee, page 3).
>
> By the Court: In this case the Government does not charge fraud on the part of the taxpayer in the failure to report correct gross income but only alleges fraud in making deductions from gross income. (Charge to the jury, App. 8).[1]
>
> By Respondent: We have, members of the jury, at great length specified to you ONE BY ONE the various expenses which Mr. Funkhouser on his books and records, and in his income tax returns, said were incurred in connection with his business. (App. 24).
>
> By the Court: I have heard no complaint of the method of keeping the books with respect to a method of bookkeeping. The criticism of the Government is that the expenses as charged were not deductible. (App. 39).

The record shows that for the years in question petitioner kept books and records and reported gross receipts and expenditures as follows:

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[1] (App. 8) refers to the Appendix of petitioner's brief in case No. 8094.

Gross Receipts $360,000.	Gross Expenditures $360,000.
Taxable Income	Expenditures
Salary	Maintenance of rental property
Rents	Taxes
Interest on Notes	Interest
Profit on Sales	Insurance
	Fuel
	Water
	Power
	Light
	Supplies
	Labor
	Permits
	Fees
	Depreciation
Non-Taxable Income	
Payments on notes owned	Property bought to rent.
Payments on lots sold	Property bought for sale.
	Shares of Stock bought for income.
	Payments on Notes
	Store bills
	Medical expenses
	Funeral Expenses
	All other expenses

Receipts from salary	$ 51,000.00
Other receipts reported	309,000.00
Total Receipts	$360,000.00
Total Expenses	$360,000.00

The record shows every dollar received and every dollar expended was reported in minute detail. (App. 25-35)

The net taxable income was then computed and reported and the estimated tax was paid. It was then the statutory duty of the respondent to examine those returns and determine the correct amount of income subject to the tax. (Sec. 54, 57, 271, 272)

The record shows respondent made no examination of petitioner's returns and respondent set up for the prosecution of this case (Respondent's Brief, page 3) the yearly salary reported as follows:

1943 Yearly salary	$16,000.
1945 Yearly salary	$14,000.
1946 Yearly salary	$11,000.
1947 Yearly salary	$10,000.
Total Yearly salary	$51,000.

and respondent computed the tax on the basis of that *$51,000. salary; or approximately one seventh of the total $360,000 of receipts reported and* then set up 200 of the 30,000 listed items of *expense totaling approximately $90,000 or approximately one fourth of the total of $360,000 expenses reported* for the basis of the prosecution in this case. (Respondent's Brief pages 3-4). Respondent confused the jury by quoting some figures of income and some figures of expense without making a complete examination.

The Internal Revenue Law (Sec. 54, 57, 271, 272), specifically require respondent to examine the returns and set out exactly how respondent should determine the correct amount of income subject to tax and exactly how respondent should determine the tax and assess and impose the tax. (Sec. 54, 57, 271, 272) And Section 272 specifically prohibited any such proceedings as the record shows was pursued in this case. Section

145(b), the section under which this prosecution was based, specifically provides that the penalties of Sec. 145(b) are for the evasion of taxes IMPOSED by the chapter (Sections 54, 57, 271, 272).

The record shows that respondent and the District Court both knew from the beginning that the charges made in this case were illegal assumptions of an agent of respondent made in violation of Section 272 and that the case could not be legally worked, and respondent so told the Court as follows:

> By Mr. GREEN: As a matter of fact, from the beginning it was never considered possible to work this case on a net worth basis. (App. 24).[1].

The record shows that petitioner told the District Court in three letters on June 6, 1952, the same day the sentence was imposed, that the prosecution was unjust and illegal and complained to the Court that these same contentions had been presented to the Department of Justice and they had been rejected by the Department of Justice and returned to respondent before this case was started in the District Court. (Govt Ex. "A", Second Supplemental Brief)

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[1] References are to the Briefs filed in the Court of Appeals.

This case was first appealed as Case No. 8094 and (App. 24) refers to the appendix filed in that case.

Respondent filed a SUPPLEMENTAL BRIEF, AND A SECOND SUPPLEMENTAL BRIEF, they are referred to as respondent's Supplemental briefs. First and second.

The District Court held a hearing on September 11-12, 1961 and issued an opinion and Order on October 18, 1961 which was appealed and the Court of Appeals assigned a new case No. 8498 in which new briefs were filed.

References to the Briefs and Appendix filed after the rehearing of September 11-12 are referred to as (E. 7).

Other references are to specific papers as described.

The record shows that all three of petitioner's letters of June 6, 1952 were removed from the District Court records to frustrate any appeal of this case.

The record shows the FIRST LETTER was mailed to petitioner's wife to be turned over by her to local counsel.

The record shows the SECOND LETTER of June 6, 1952 was put back into the record by respondent in August 1960 as Government Exhibit "A" attached to respondent's SECOND SUPPLEMENTAL BRIEF OF THE UNITED STATES.

The record shows the THIRD LETTER of June 6, 1952 was withheld from the record until September 11, 1961 when it was returned to the District Court record as Government Exhibit M-1, M-1A, (E. 7).

The record shows respondent never made any examination of petitioner's books, records or income tax returns. The Internal Revenue Law specifically required the Commissioner of Internal Revenue to examine the returns before there is any assessment or proceeding in court for the collection of any tax from any taxpayer. (Sec. 272)

Before this proceeding could have been legally started in the District Court the Internal Revenue Law of 1939 (Sec. 54, 57, 271, 272) required respondent to examine the returns which had been filed and to determine the correct amount of income subject to the tax (Sec. 54; required respondent to examine the returns and determine the correct amount of the tax (Sec. 57); required respondent to make the computations required by the statute to determine if there was a deficiency in tax (Sec. 271); and then, if respondent did determine there was a deficiency in tax the statute

required respondent to mail a 90-day notice of such deficiency to the taxpayer and the statute afforded petitioner the right to petition the Board of Tax Appeals for a redetermination of the deficiency (Sec. 272) and the statute prohibited respondent to begin any proceeding in court for the assessment, distraint or collection of any tax until the provisions of those sections of the Internal Revenue Laws had been complied with and until the decision of the Board of Tax Appeals had become final. (Sec. 272)

The Courts have repeatedly held the assessment or collection of a tax before the provisions of Sec. 272 have been complied with is illegal.

Peerless Woolen Mills v. *Rose Collector*, 28 F. (2d) 66
Venture Consolidated Oil Fields v. *Rogan, Collector*, 86 F. (2d) 149
United States v. *Yellow Cab Co.*, 90 F. (2d) 699
Maxwell v. *Campbell, Collector*, 265 F. (2d) 461
Commissioner v. *Stewart*, 186 F. (2d) 239

Those cases and many other cases have held that the collection of a deficiency in tax before the decision of the Board of Tax Appeals has become final is illegal. The record shows there was no examination, notice of redetermination in this case and this case was prosecuted in violation of the statute on "assumed figures" set with the knowledge that the case could not be legally worked. Respondent said:

> By Mr. GREEN: As a matter of fact, from the beginning it was never considered possible to work this case on a net worth basis. (Tr. 6-3-52, page 1360)

The record shows, by the testimony of respondent's agents, that respondent had made no examination of the returns. Respondent's agent testified that no inquiry had been made about the listed items of expense—not even the very first item—set up by respondent for this prosecution (App. 28, 35, 36, 46), the agent testified that respondent had made no calculation of the listed items of expense, (App. 27), had made no computation of the allowable depreciation (App. 48); had made no tabulation of any of the listed items of expense. (App. 27)

The record shows the District Judge went so far from the accepted and usual course of judicial proceedings as to tell the agent and the jury that no tabulation of the listed items of expense was at all necessary. The Judge said:

> By Judge Chesnut: Well, now, have you made any tabulation? I do not think that it is at all necessary, I am merely inquiring as to whether you have made any tabulation of what his aggregate amounts are for that year, which appear on these books. That is to say, if his gross receipts were seventy thousand dollars, and his expenses were, say, sixty nine thousand dollars, what amount of that sixty nine thousand of expenses were not represented by available vouchers, or papers, or receipted bills. Answer: No, sir, we have not made such calculation. (App. 27).

The record shows that Judge Chesnut then took over and prosecuted the case by asking 3404 questions for 8725 lines of the record.

The record shows that for that year respondent and the Court found that petitioner had reported gross receipts of Seventy Thousand Dollars and expenses of

"say, sixty nine thousand dollars" and then respondent without making any examination, or tabulation, or calculation of the items, set up for that year the sum of $16,000. as Yearly Salary reported (Brief and Appendix for Appellee, page 4) which was only about one fourth of the total receipts reported for that year, and respondent set up and presented that figure to the District Court, the District Court jury, and to the Court of Appeals of the Fourth Circuit as "Evidence of the wilful intent to evade the payment of taxes" (Respondent's Brief filed in the Court below on March 15, 1962, page 4).

When the record shows that respondent took less than one fourth of the total receipts reported for that year and then without making any inquiry, calculation, computation or tabulation of the total amount reported and set that one fourth up as evidence of the evasion of the "assumed taxes" in violation of law (Sec. 54, 57, 271, 272) petitioner says that he was denied due process of law.

Petitioner stoutly maintains that fact is proved when the Court told respondent: "I do not think any tabulation is at all necessary, I am merely inquiring as to whether you have made any tabulation of what his aggregate amounts are for that whole year, which appear on these books". (Tr., 5-21-52, page 24). At the very beginning of the case and then at the end of the case when the Court ruled on 6-3-52 (page 1413):

> By JUDGE CHESNUT: Well, he (the agent) does it because he is an official of the United States authorized to determine what tax is correct according to the contention of the Government, but Mr. Golomb (Petitioner's accountant) is not an official of the United States and he has no author-

> ity to tell this jury what the tax is and what the tax is not. (Tr., 6/3-52, page 1413)

Those facts together with respondent's admission to the Court:

> By Mr. GRAVEN: As a matter of fact, from the beginning it was never considered possible to work this case on a net worth basis.

show that the lower court so far departed from the accepted and usual course of judicial proceedings and justice, and denied to petitioner due process of law as to call for an exercise of this court's power of supervision.

The record shows that before there was any examination, inquiry, calculation, computation or tabulation this case was presented to the Department of Justice for criminal prosecution. The Department of Justice made inquiry about the facts, called petitioner's lawyer and accountant to the Department with the records, examined them, rejected respondent's contentions and returned the case to respondent for the examination required by Internal Revenue Law (Sec. 54, 57, 271, 272).

The record shows that thereafter respondent made no examination of the books, records, or returns, made no inquiry (App. 28, 35, 36, 46) made no calculation, (App. 27), made no computation (App. 48), made no tabulation (App. 27) and in violation of law (Sec. 54, 57, 271, 272), and after the rejected and return of the case by the Department of Justice, respondent just went, or sent, some "assumed figures" to the United States Attorney in Baltimore and confused the United States Attorney as to the facts, "assumed figures" and

confused this petitioner, R. E. Funkhouser of the District of Columbia, with R. J. Funkhouser of West Virginia (E. 47).

The record shows that respondent, Bernard Flynn, and the Court then speculated that some one else, perhaps a Mr. Ramsey or a Mr. Green or somebody else signed the indictment (E. 46-47) may have forged the name of Bernard J. Flynn above the typewritten words United States Attorney to give the phony, false, forged indictment an appearance of an official indictment. (See the phony, forged indictment set up in violation of Rule 7(c) of the Federal Rules of Criminal Procedure.) It is highly improbable that Ramsey or any other lawyer or assistant, or employee, or any one else with any authority as a Government lawyer signed or had any thing to do with it. Whoever did it carefully avoided any responsibility for any part in the phony, false, confused, illegal contentions which he knew could not be worked (App. 24), which he knew had not been determined (E. 27, 28), which he knew were set up on "assumed figures" which had not been inquired about (App. 28, 35, 36, 46), calculated (App. 27), computed (App. 48), tabulated (App. 29), assessed (E. 27), imposed (E. 27, 28) and on which respondent had not mailed the required 90-day notice (E. 27); and the Board of Tax Appeals had not made any redetermination (E. 27); which he knew was required by statute (Sec. 272) before any deficiency in taxes could be imposed, due, owing, payable or evaded as charged (Sec. 272).

When whoever signed Bernard J. Flynn's name on that phony, false, fake indictment he knew that the case had been rejected by the Justice Department and he purposely did not sign his name but forged the name

of Bernard J. Flynn because he knew that Bernard J. Flynn had not made any inquiry about the facts (E. 47) and Bernard J. Flynn had been confused and knew nothing about it. Bernard J. Flynn testified as follows:

> By BERNARD J. FLYNN: I don't have any recollection of being present before the grand jury.
>
> I don't have any recollection of the facts in connection with this particular case at all.
>
> The fact of the matter, and I think we were confused with another Mr. Funkhouser all along, and I was surprised to find out you weren't the same man. I thought you were from West Virginia. (E. 47)

The record shows that this case was started in the District Court on a phony, false, forged, confused indictment not signed by the attorney for the Government as required by Rule 7 (c) of the Federal Rules of Criminal Procedure and the record shows that this was deliberately done after respondent knew from the beginning that the case could not be worked on a net worth basis (App. 24), and after the case had been rejected by the Department of Justice. (Government's Exhibit "A") also Exhibit M-1 (E. 5).

The record shows also that the case was never presented to or voted on by members of the grand jury as there is no record of the number of jurors concurring in the finding of the indictment as is required to be prepared and filed with the clerk of the court by Rule 6 (c) of the Federal Rules of Criminal Procedure.

The record shows that petitioner questioned the legality of the grand jury proceeding and designated the record for transmission to the Court of Appeals but there was no record to be transmitted. (See

record) Respondent had endeavored to place the facts in the District Court record by answers to interrogatories served on members of the grand jury but the District Court, at respondent's request, ordered petitioner to cease submitting interrogatories to members of the grand jury (R. 229).

The record shows that when petitioner questioned the practice of presenting forged papers in District Court the Court said:

> By JUDGE THOMSEN: He (Bernard J. Flynn) didn't sign the indictment. He said Mr. Ramsey signed the indictment as the Assistant United States Attorney in charge of the matter, which was in accordance with the practice of this Court during Mr. Flynn's administration, during subsequent administrations, and there is nothing wrong with it. . . . Mr. Ramsey signed the indictment. He said Mr. Green signed Mr. Flynn's name in certain other situations in which he was responsible, and that is the regular practice, and there is no use in your going any further with this point. It is an utter waste of time. You have made your point, and I have listened to it, and I am telling you now that I am not going to give any weight to this point because there is nothing to it. (E. 46-47)

Petitioner says that record of the beginning of this case in the United States District Court shows the need of the exercise of this Court's power of supervision to stop the injustice of the District Court making a regular practice of flouting the requirements of the Federal Rules of Criminal Procedure to start a criminal prosecution in violation of Internal Revenue Law (Sec. 54, 57, 271, 272 and Federal Rules of Criminal Procedure Rules 4(c) and 7(c).

The record shows that local District Court practice and Rule was only one of four local District Court Rules which brought injustice denial of due process of law and the illegal sentence in this case. Other local Court Rules which brought about the illegal conviction and sentence in this case were:

THE FIRST UNJUST DISTRICT COURT RULE

The District Court Rule under which any resident of the District of Columbia could be prosecuted in the District Court of Maryland because respondent maintained an office in Baltimore. That Local Court Rule was made after the fines and fees of the Bowles Case showed the profit from the prosecution of income tax cases in Baltimore. It was enforced in this case.

When the injustice in this case was called to the attention of petitioner's Senator, Representative in Congress, the Joint Committee of Internal Revenue Taxation, The House committee of Ways and Means and others, the Congress of the United States by 72 Stat. 512, approved August 6, 1958 corrected that unjust rule and provided that thereafter a defendant can be tried in the judicial district in which he was residing when the alleged offense of tax evasion was committed. That Statute has corrected the injustice so forcifully and unjustly displayed in this case but it has not removed the injustice done to this petitioner by that rule, while it was enforced in this case.

THE SECOND UNJUST DISTRICT COURT RULE

The record shows this proceeding was started on an unjust local District Court Rule which permitted irresponsibility and recklessness to start this case. The Federal Rules of Criminal Procedure require the indictment to be signed by the attorney for the govern-

ment. (Rule 7(c)). The purpose of that rule is to prevent just such recklessness as started this case in the District Court.

The indictment was not signed by the United States Attorney as it purports to be. Bernard J. Flynn testified that he did not sign the indictment. His name on the paper is a forgery put there by someone who accepted no responsibility for the paper. Petitioner was thus deprived of due process of law when respondent's agent or the Assistant United States Attorney who told the Court that "As a matter of fact, from the beginning it was never considered possible to work this case on a net worth basis" signed Bernard J. Flynn's name to a paper to be set up in violation of Rule 7(c) as an indictment. Bernard J. Flynn testified that he was confused about the facts and about the defendant. He testified "We were confused with another Mr. Funkhouser all along, and I was surprised to find out you weren't the same man. I thought you were from West Virginia." The agent or whoever forged Mr. Flynn's name on that paper knew those facts and he dodged all responsibility by forging Bernard J. Flynn's name and accepting no responsibility on himself. A direct violation of Rule 7(c) of the Federal Rules of Criminal Procedure which brought irrepairable injury and injustice to this petitioner.

Judge Thomsen stated the District Court Rule which permitted such injustice as follows:

> By JUDGE THOMSEN: He said Mr. Ramsey signed the indictment as the Assistant United States Attorney in charge of the matter, which is in accordance with the practice of this Court during Mr. Flynn's administration, during subsequent administrations, and there is nothing wrong with it. (E. 47)

ARGUMENT

The record shows the party who signed the indictment did not sign it as the Assistant United States Attorney but just plain forged the name of Bernard J. Flynn as though Flynn had actually signed it. It was a plain forgery not signed by Flynn or by any Assistant United States Attorney. It was a plain misrepresentation that it had been signed by Bernard J. Flynn, United States Attorney in the full execution of his duties as required by Rule 7(c) of the Federal Rules of Criminal Procedure.

The only purpose of the Federal Rules of Criminal Procedure Rule 7(c) requiring the indictment to be signed by the attorney for the Government was to place responsibility on the Government Attorney for the duties entrusted to him in connection with the presentation of the facts to the grand jury. In this case Bernard J. Flynn did not present any facts to the grand jury (E. 47). He made no inquiry about the facts. (E. 47). He was confused about the facts (E. 47). He was confused about the charges and about the facts and was confused with another Mr. Funkhouser all along. (E. 47). He testified "I was surprised to find out you weren't the same man. I thought you were from West Virginia." (E. 47).

The record shows that as a result of Bernard J. Flynn's confusion and somebodys forging his name on that phony, false, confused indictment, this Mr. Funkhouser from Washington, D. C. was confused with the Mr. Funkhouser from West Virginia and Bernard J. Flynn did not sign the indictment as required by the Federal Rules of Criminal Procedure, Rule 7(c).

The paper shows that it was not signed by any Assistant and it shows no other signature. It was a plain forgery of the name of Bernard J. Flynn United States Attorney, put there in violation of Rule 7(c) of the Federal Rules of Criminal Procedure to start this illegal prosecution of this Mr. Funkhouser from Washington, D. C.

THE THIRD UNJUST DISTRICT COURT RULE

The local District Court Rule 55 prohibited any person accused of a crime being represented by a lawyer who was not a resident of, and who did not maintain an office in the district.

The record shows that when this petitioner was arrested in Washington, D. C. he hired T. Howard Duckett, a reputable Washington, D. C. lawyer to represent him and he was immediately confronted with the Local District Court Rule No. 55 which required a local counsel resident of and maintaining an office in the District (Respondent's Brief, pages 5-6). The record shows that the Clerk waived the rule to the extent of entering the appearance of Mr. Duckett but the District Court a few days thereafter appointed G. C. A. Anderson to head a committee to study the existing Rules and make recommendations for such changes as might seem appropriate. The record shows that G. C. A. Anderson and his committee recommended the retention and the enforcement of the local Rule and the Rule, was retained and enforced as a Rule of the District Court. Mr. Duckett was advised (Respondent's Brief, p. 6) to seek the services of Mr. G. C. A. Anderson, the law partner of Judge Chesnut's son-in-law Wilson K. Barnes (E. 54) and Mr. Duckett and petitioner went to see Judge Chesnut's son-in-law

Wilson K. Barnes and he employed G. C. A. Anderson and his law firm of Anderson and Barnes and Morrow (Respondent's Brief, page 6) as petitioner's local lawyers as required by the local District Court Rule.

Petitioner paid G. C. A. Anderson and the Law Firm of Anderson and Barnes a $10,000.00 fee for representing petitioner in the case.

The record shows that the local counsel failed to properly represent petitioner. The record shows the local counsel:

1. Raised no objection to the false, phony, forged indictment.
2. Raised no objection to the prosecution of "assumed figures" set up as taxes owed, due, payable and evaded when no deficiency in tax had been determined.
3. Raised no objection when respondent's agent testified that he had made no inquiry about the listed items.
4. Raised no objection when the agent testified that he had made no calculation, computation or tabulation of the listed items.
5. Raised no objection when the agent testified that he had made his calculations of "assumed taxes" on six different sets of "assumed figures" all of which he knew to be reckless assumptions and to be wrong from the beginning.
6. Raised no objections to the agent's perjury from page five of the record.
7. Raised no objection when the District Court misquoted the applicable Internal Revenue Law by

quoting only the last 62 words of Section 145(b) as the applicable law. (Charge, page 12, App. 8).

8. Cited no applicable Internal Revenue Law.

9. Gave petitioner a choice of paying for an appeal before the case was completed or having the local counsel ask his partner's Father-in-law to impose the sentence immediately, be fingerprinted, and start the sentence at once.

10. The record shows G. C. A. Anderson then discussed, determined, and quoted a minimum fee of seven or eight thousand dollars for an appeal of the case.

ARGUMENT

The record shows that these ten items are only a few of the many unjust and illegal effects resulting in this case from the Local District Court Rule requiring a local lawyer for this proceeding. Respondent now admits this rule was so unjust that: "This rule has not been enforced in recent years in criminal cases and has been amended." (Respondent's Brief, page 6). The injustice has been corrected since this case. It should be corrected in this case.

The record shows that while the case was still going on and before the case was concluded G. C. A. Anderson discussed the question of an appeal with petitioner and Mr. Anderson quoted fees larger than petitioner could immediately raise and when an appeal fee was not paid before the case was concluded Mr. Anderson decided that there would be no appeal of the case if the jury rendered a verdict of guilty. Mr. Anderson was called as a witness by the Court and he testified to the Court as follows:

By Mr. ANDERSON: Your Honor, my recollection of the circumstances are briefly these: This case had been going on for quite sometime. There had been some talk whether there should be an appeal or whether there should not be an appeal.

After the charge and after the jury went out, and this is my clear recollection too, we were sitting in what was then the old library, the old Federal Court Library, and Mr. Funkhouser—I said to Mr. Funkhouser at that time, "Do you want to take an appeal or don't you want to take an appeal? If you want to get it over with as fast as you can or right away, the thing to do is go on down and sign one of those papers and start your sentence. If you want to take an appeal, why, all right."

We had previously advised him that we didn't think his chances on the appeal were very good,

He said, "No, the jury is out, and if they find me guilty, that's it," or words to that effect.

The jury came in; the jury found him guilty.

He said he wanted to start it right away, just as we had previously discussed it, and then he went down and signed it and was fingerprinted, and that was the incident. (E. 57)

THE FOURTH UNJUST LOCAL DISTRICT COURT RULE

This rule consists of a number of unjust, lax, and illegal practices regarding District Court papers which brought injustice in this case as follows:

1. The District Court issues no receipt for any paper filed.
2. The District Court in violation of Rule 6(c) of the Federal Rules of Criminal Procedure neither received nor filed a grand jury record required in this case.

3. The District Court received and recorded a phony, false, forged indictment not signed by the United States Attorney as required by Rule 7(c) of the Federal Rules of Criminal Procedure.

4. The phony, false, forged indictment was not signed by any Assistant United States Attorney or any one who could be identified and was a plain forgery of the United States Attorney's name to illegally destroy the rights of this plaintiff. It was received by the District Court knowingly and in accordance with an established rule or practice stated by the Court as follows:

> By JUDGE THOMSEN: He (the United States Attorney) didn't sign the indictment. He said Mr. Ramsey signed the indictment as the Assistant United States Attorney in charge of the matter, which is in accordance with the practice of this Court during Mr. Flynn's administration, during subsequent administrations, and there is nothing wrong with it.
>
> Mr. FUNKHOUSER: Your Honor, he says Mr. Ramsey didn't sign it.
>
> JUDGE THOMSEN: He says Mr. Ramsey did sign it.
>
> Mr. FUNKHOUSER: And Mr. Green signed it also.
>
> JUDGE THOMSEN: No, no. Mr. Ramsey signed the indictment. He said Mr. Green signed another one. He said Mr. Green signed Mr. Flynn's name in certain other situations in which he was responsible, and that is the regular practice, and there is no use in your going any further with this point. It is an utter waste of time. You have made your point, and I have listened to it, and I am telling you right now that I am not going to give any weight to this point because there is nothing to it. (E. 46-47).

The indictment was signed "Bernard J. Flynn, United States Attorney." It was not signed by Ramsey or any other Assistant. It was a plain forgery of the United States Attorney's Name to affect the legal rights of this petitioner and set up a phony, false, forged indictment in violation of Rule 7(c) Federal Rules of Criminal Procedure.

The phony, false, forged indictment was not signed by the attorney for the Government and there was no record made, or kept, or filed with the clerk of the District Court of the number of jurors concurring in the finding of the indictment as required by Rule 6(c) of the Federal Rules of Criminal Procedure, and the violation of both Rules 6(c) and 7(c) of the Federal Rules of Criminal Procedure together with the forgery, (E. 46) and false assumed charges (App. 48-49) and admitted confusion of this Mr. Funkhouser with the Mr. Funkhouser from West Virginia (E. 47) and respondent's admission that from the beginning it was never considered possible to work this case on a net worth basis (App. 24). All of those things combined with the fact that respondent had made no examination as required by Sec. 54, 57, 271, 272 and had mailed no 90-day notice and had assessed and imposed no tax (E. 27-28) and no tax was due, owing, payable or evaded as charged (E. 26, 27, 28) make the circumstances surrounding this phony, false, forged indictment to begin this case an important issue which this Honorable Court must consider. It was the basis on which this petitioner was denied due process of law and justice.

5. The District Court issued no acknowledgment of receipt of petitioner's Notice of Appeal of 6-6-52. (E. 9-10). Three months later the Court told

Mr. Sorrell that the appeal paper had been received, read, and the fact that it concerned petitioner's appeal had been noted as follows:

By JUDGE CHESNUT: Now, I recall receiving a letter from Mr. Funkhouser during that period, shortly after, and before present counsel came into the case, which was generally to the effect that he had no idea of appealing. (App. 54).

6. The Notice of Appeal was not acknowledged or filed in the District Court records and was mailed to petitioner's wife for filing by counsel.

7. The second letter of June 6, 1952 was not acknowledged as received, it was not recorded in the District Court Records, and it was withheld from the District Court Records for over eight years until it was returned in August 1960 as Government Exhibit "A" attached to the SECOND SUPPLEMENTAL BRIEF ON BEHALF OF THE UNITED STATES. That letter of June 6, 1952 was returned to the District Court files in 1960 by respondent to confuse the Court of Appeals into believing that it was the only letter written by petitioner to the District Court on June 6, 1952. Respondent said in that SECOND SUPPLEMENTAL BRIEF ON BEHALF OF THE UNITED STATES:

RESPONDENT'S BRIEF PAGE ONE: Funkhouser stated in his brief that this letter had been returned by Judge Chesnut to Mrs. Funkhouser in some manner unspecified and that thereby Judge Chesnut had frustrated Mr. Funkhouser's effort to appeal his conviction.

The first supplemental brief on behalf of the United States pointed out the inherent improb-

ability of this claim. Since that supplemental brief was filed, new information has come to the attention of the United States Attorney, which new information makes Mr. Funkhouser's position with respect to the alleged letter completely untenable.

Judge Chesnut has found four letters in his file which we feel should be brought to the Court's attention. They do not appear in the record of the proceedings before Judge Thomsen, but neither does Mr. Funkhouser's purported letter to Judge Chesnut, nor was it made a part of the record below by proffer or testimony. We now find that Mr. Funkhouser did write to Judge Chesnut on June 6, 1952; that the letter was never returned to Mr. Funkhouser; and that, as will appear from the photostatic copy of this letter, which is filed herewith as Government Exhibit A, it does not mention the subject of appeal. . . . It refers to Judge Chesnut and Appellant having been imposed upon—the same claim Mr. Funkhouser made in Exhibit A, except that in the letter of June 6, 1952 Mr. Funkhouser says that Judge Chesnut was imposed upon, whereas in the letter of December 3, 1932, he says, "I still feel that you and I were imposed upon at that trial." . . . Without seeking to labor the point made by these exhibits, we mention the fact that Mr. Funkhouser has not claimed that he wrote two letters on June 6, 1952, and it would be most remarkable if he had done so and not mentioned it in his letter of December 3, 1952.

We respectfully submit that the claim that Appellant attempted to appeal his conviction within the time for appeal has been completely discredited and that the present appeal should be denied.

ARGUMENT

The record shows that on that basis petitioner's appeal was denied. Appellant contended that he had written Judge Chesnut THREE LETTERS ON JUNE 6, 1952.

(1) A NOTICE OF APPEAL (E. 9-10).

(2) A SECOND LETTER complaining of imposition. (Government Exhibit "A")

(3) A THIRD LETTER complaining of imposition and deceit and other things. (Government Exhibit M-1, M-1A)

The record shows that ALL THREE of those LETTERS were kept out of the District Court Records to frustrate any appeal of the case. The FIRST LETTER was mailed to petitioner's wife in Washington, D. C. (Exhibit M-6 E. 9-10)

The second letter went directly into Judge Chesnut's personal file where it was kept until it was disgorged as Exhibit "A" of the SECOND SUPPLEMENTAL BRIEF OF THE UNITED STATES in August 1960 and presented to the Court of Appeals as positive proof that the FIRST LETTER had not been written. Judge Chesnut released that SECOND LETTER of June 6, 1952, which he had received, not acknowledged, not recorded and had held in his private file from June 6, 1952 until he released it in August 1960 to prove the "inherent improbability of petitioner's claim that he had mailed the NOTICE OF APPEAL of June 6, 1952".

The record showed and petitioner had quoted that Judge Chesnut had admitted to Mr. Sorrell on September 10, 1952 that he had received a letter concerning petitioner's appeal:

> By JUDGE CHESNUT: Now, I recall receiving a letter from Mr. Funkhouser during that period, shortly after, and before present counsel came into the case, which was generally to the effect that he had no idea of appeal. (Tr. 9-10-52, page 11)

The record shows that none of petitioner's letters to Judge Chesnut after the sentence was imposed at 10:00 A. M. on June 6, 1952 were recorded in the District Court Record and in August 1960 the SECOND LETTER of June 6, 1952 was fished out of Judge Chesnut's private file to prove that THE FIRST LETTER OF June 6, 1952 was not written. However it will be noted that respondent kindly pointed out that the SECOND LETTER of June 6, 1952 "did not mention the subject of appeal". The subject of appeal had been taken care of in the FIRST LETTER of June 6, 1952 (see E. 9-10), and the SECOND AND THIRD LETTERS of June 6, 1952 were written to Judge Chesnut at the suggestion of James S. Morrow, an employee of Judge Chesnut's son-in-law, Wilson K. Barnes and G. C. A. Anderson who were then discussing the minimum fee they were to charge petitioner for the appeal or for a new trial before Judge Chesnut and Mr. Morrow insisted that Judge Chesnut be told that he had been imposed upon by respondent.

Respondent said; to cinch the matter in the Court of Appeals:

> "Without seeking to labor the point made by these exhibits, we mention the fact that Mr. Funkhouser has not claimed that he wrote two letters on June 6, 1952, and it would be most remarkable if he had done so and not mentioned it in his letter of December 3, 1952."

THEN, RESPONDENT SAID:

> "We respectfully submit that the claim that appellant attempted to appeal his conviction within the time for an appeal has been completely discredited and that the present appeal should be denied."

Respondents bravado overlooked two important facts. Petitioner and others knew that the letters had been written and received by Judge Chesnut and he knew where they were and that they would reappear in the District Court Record. The guff about there being only one letter was inexcusable bluff because respondent, Judge Chesnut and others knew there were three letters written from the Baltimore Jail on June 6, 1952 and that they had been received, read and commented on and were then in petitioner's and Judge Chesnut's possession and that they would be produced in Court. The heedless production of the SECOND LETTER as the ONLY LETTER of June 6, 1952 was inexcusable while the THIRD LETTER lay there beside it. (Government Exhibit M-1 and M-1A).

Petitioner asks this Honorable Court to consider this bluff by respondent to bilk petitioner out of an appeal of this illegal case.

Respondent in the SUPPLEMENTAL BRIEF had argued:

> The record clearly demonstrates that Mr. Funkhouser's assertions with respect to the alleged letter of June 6, 1952, were made, in almost identical form as now, in the 1958 proceedings in both the District Court and the Court of Appeals. The adverse decision is the law of the case, and the question cannot properly be raised for the second time.
>
> In the hearing in the District Court Mr. Funkhouser failed to produce any evidence with respect

to the alleged letter of June 6, 1952, and even if the assertion could properly been raised for the second time, the District Judge correctly denied the motion. (Pages 2-3).

ARGUMENT

The record shows that respondent having been able to confuse the Court of Appeals once by withholding from the District Court Records the letters of June 6, 1952 and get the decision based on the absence of the papers being then withheld from the record tried here to have the appeal frustrated again by still withholding ONE OF THE LETTERS. When petitioner could not then produce the letter which Judge Chesnut was holding in his private file respondent tried to capitalize on the withholding to frustrate any appeal of this illegal case.

Respondent in THE SUPPLEMENTAL BRIEF SAID:

> The contention with respect to the alleged letter having no basis whatever in the record, this Court, on October 13, 1958, held that the action to correct the sentence was properly overruled, and the action of the District Judge was affirmed. (Page, 6)

ARGUMENT

It is obvious that both respondent and the District Judge believed that as long as all the letters and papers were kept off the District Court Record the action of the District Judge could keep the sentence from being corrected. "The action of the District Judge was affirmed" . . . before the papers were returned to the record.

Respondent in the SUPPLEMENTAL BRIEF SAID:

> The record shows unmistakably that the issue of the alleged letter of June 6, 1952, was brought

into controversy, in almost identical form as now, by Mr. Funkhouser's prior motion.

The 1958 decisions of the District Court and of the Court of Appeals finally and authoritatively settled the dispute, and that issuable fact, once legally determined, is conclusive as between the parties. Mr. Funkhouser cannot avoid the consequences of the adverse determination by the simple act of filing new motions. (Page 7).

Respondent then quoted *Jones v. Squier*, 195 F. 2d. 179:

"Public policy requires that there should be and end of litigation and the litigants are entitled to protection from harassment by attempts to relitigate questions already finally determined". (Page 7).

ARGUMENT

The record shows that petitioner tried to get the facts before the Court long before he was able to shake out the proof in the papers then being withheld from the District Court Records by respondent and the District Court Judge. Respondent said there was never but one letter to Judge Chesnut on June 6, 1952 while Judge Chesnut withheld the other two letters in his private file. Full proof was not completely available to petitioner until more of the papers were returned. More have not been returned to the District Court file but the record shows that other important testimony and papers are still being withheld to frustrate this appeal. See Petition for Writ of Mandamus in case No. 8552 Court of Appeals for the Fourth Circuit and sealed papers in the Record of this case.

Respondent in the SUPPLEMENTAL BRIEF SAID:

> In view of the inconsistent position taken by him in the post-conviction motion and hearing of September 10, 1952, it is extremely improbable that Mr. Funkhouser mailed such letter to Judge Chesnut. The present action is a collateral attack upon a prior final judgment of the District Court, and the burden was on Mr. Funkhouser to present evidence sufficient to overcome the presumption of regularity attached to the manner in which Judge Chesnut discharged his duties. (Pages 7-8)

ARGUMENT

The record shows that at the time of the post-conviction motion and hearing of September 10, 1952 petitioner was in the Federal Reformatory at Petersburg, Virginia. He told the lawyer his son had hired to press the appeal that he had filed the Notice of Appeal but Judge Chesnut told the lawyer that petitioner had not filed a Notice. Petitioner could not then prove that Judge Chesnut had received the Notice and the lawyer wisely refrained from pressing the matter which he could not prove and he pursued the courses which seemed most prudent to him after talking to Judge Chesnut. With all the papers removed from the District Court records and with Judge Chesnut withholding TWO OF THE LETTERS of June 6, 1952 in his private file and with petitioner's Affidavit of Facts out of the District Court, and petitioner working in the Garden of the Petersburg Reformatory in Petersburg, Virginia the lawyer was in no position to take an "inconsistent position" on anything and the record shows that he did not. The record shows that it took petitioner nine years after he got out of prison to locate the missing letters and proof now in the record.

8. Petitioner's wife's letter of June 13, 1952 to Judge Chesnut was not acknowledged, filed or recorded in the District Court records. It was withheld by Judge Chesnut from June 13, 1952 until September 11, 1961 when it was filed as Government Exhibit M-1 and M-1A.

9. Petitioner's Affidavit of Facts of June 28, 1952 was filed in the District Court by Mr. Sorrell (Tr. 9-10-52, page 12) but it was removed from the District Court Record and was mailed by Judge Chesnut to petitioner at Petersburg Prison on July 9, 1952 with letter:

> By JUDGE CHESNUT: I am returning the long paper which you have sent me in the event you wish to make other use of it by conference with your new counsel or otherwise. (Exhibit B. of SECOND SUPPLEMENTAL BRIEF ON BEHALF OF THE UNITED STATES).

10. No record of how the Transcript of Record of 5-21-52 was removed from the Court Records.

11. No receipt showing who received 228 papers into the District Court Record in this case.

12. No record of the filing or removal of the Transcript of 9-10-52 in the District Court. Record of the removal and withholding of that Transcript from the Record until 12-18-60.

13. No record in District Court of the rejection of petitioner's Notice of Appeal of 10-24-61 by the Clerk of the District Court.

14. No record of the rejection of petitioner's Motion for rehearing of 12-27-61.

The record in this case shows that all of the above items were in accord with the policy of the District Court as stated by the Court as follows:

> By Judge Chesnut: I receive many such applications within sixty days of the imposition of the sentence and I take the trouble to read most of them, but this last one, well, I think it was received possibly a day or so before or after the sixty days, but it was not presented to me by counsel, and of course, you would not reasonably expect me to take the initiative in it, to communicate with counsel in order to discuss the matter. (Tr., 9-10-52, pages 17-18)

ARGUMENT

The above record shows that this petitioner has been denied due process of law and petitioner prays this Honorable Court to exercise its power of supervision in the interest of justice in this case.

Respondent in the Supplemental Brief said:

> "The crime defined in 26 U.S.C.A. Int. Rev. Code, Sec. 145(b) may be committed by taking fraudulent deductions from gross income reported as well as by fraudulently failing to report income received." . . . . Funkhouser reported gross income of approximately $360000.00, upon which he paid total taxes of $235.00.
>
> The fraudulent business deductions disallowed by the United States comprised some 200 items totaling $90,000.00, and the taxes evaded during the five year period exceeded $28,000.00. Mr. Funkhouser kept his own books and records, and all of his deductions, including those disallowed, were charged to one of the following catagories: Miscellaneous: Miscellaneous Property, Property Improvements, Maintenance, Labor, Interest or depreciation. . . . . As further evidence of the

wilful attempt to evade the payment of taxes, the United States produced four financial statements signed by Mr. Funkhouser and submitted by him to the Prince George's Bank and Trust Company. . . . These statements contained the following information:

1943 Yearly Salary	$16,000.00
1945 Yearly Salary	14,000.00
1946 Yearly Salary	11,000.00
1947 Yearly Income	10,000.00
Total Salary Reported (Respondent's Brief, Pages 9-11)	$51,000.00
Additional Receipts Reported	$309,000.00
Total Receipts Reported	$360,000.00

ARGUMENT

This case was unjust and illegal from the beginning when it was based on charges of fraud and tax evasion based on figures set up from a fraction of the total gross receipts reported and on the listed expenses a fraction of which (200 items) represented only a fourth of the total expenditures.

The salary reported ($51,000.00) represented only about one seventh of the total of $360,000.00 reported; much of which was not taxable income. The $90,000.00 expenses listed as money paid out was only about one fourth of the $360,000.00 received, listed and accounted for in the books and records and returns.

Without having made any inquiry, calculation, computation, tabulation or examination of the whole $360,000.00 received and accounted for this prosecution was illegal and in violation of Internal Revenue Law (Sec. 54, 57, 271, 272).

The prosecution on "assumed figures" (App. 48-49) based on a fraction of the total receipts and a fraction of the total expenditures was illegal. The sentence based on those "assumed figures" without any examination was illegal. The removal of District Court papers to frustrate any appeal of this case was illegal. The Opinion and Order of the District Court was not based on the facts in the record and it should be re-examined and corrected. The illegal sentence should be corrected.

It was unjust, illegal and a violation of due process of law to take 200 of the listed items from the 30,000 listed items and charge those items were fraudulent. The payment of those items had been made from the $360,000.00 receipts received during the period and the law required that the total amount received be accounted for.

Every dollar was accounted for (App. 25-54).

> THE COURT SAID: I have heard no complaint of the method of keeping the books with respect to a method of bookkeeping. The criticism of the Government is that the expenses as charged were not deductible. (App. 39)

Petitioner's receipts were not confined to salary ($51,000) but included other receipts ($309,000).

Of that $309,000. of other receipts some money was paid out for funeral expenses, medical bills, store accounts, purchase of property, etc., every item of which was itemized and listed.

The books and records and income tax returns were so complete that respondent could point out and specify

each item ONE BY ONE. Respondent told the District Court and the jury:

> By MR. GREENE: We have, members of the jury, at great length specified to you one by one the various expenses which Mr. Funkhouser on his books and records, and in his income tax returns, said were incurred in connection with his business. (App. 24).

Had Mr. Funkhouser not reported the funeral expenses, the medical expenses, the store bills, the purchase of property etc. the returns would not have been complete and accurate.

Had Mr. Funkhouser not reported the $90,000 expended for the 200 items bought in the period his returns would have not been complete and accurate and would not have complied with the requirements of Sec. 41, 51, 54 of the Internal Revenue Law. By reporting every dollar received and every dollar expended so that they could be specified "ONE BY ONE" the taxpayer complied with the law and the law then required the respondent to examine those returns and determine the correct amount of income subject to the tax (Sec. 54) determine the correct amount of the tax (Sec. 57), make the required computations and determine if there was a deficiency in tax (Sec. 271), and then if respondent determined there was a deficiency in tax respondent was required to mail a 90-day notice of such deficiency and the law provided that petitioner could then petition the Board of Tax Appeals for a redetermination of the deficiency (Sec. 272) and it was then provided by the law that no assessment of a deficiency and no proceeding in court for collection should be begun until the decision of the Board of Tax Appeals had become final (Sec. 272).

The record shows that without any examination or any compliance with any of the provisions of the Internal Revenue Law (Sec. 54, 57, 271, 272 or 145(b)) this proceeding was begun on several different sets of "assumed figures" set up by respondent in violation of the law and it was prosecuted in violation of Section 272 and all the rules of justice above mentioned and many, many more as shown in the record but not repeated here in more detail only because there are over 200 such items and repetition has already become burdensome. Many of them have been mentioned herein and in other papers filed and petitioner prays this Honorable Court to please review the complete record of injustice from the phony, false, forged indictment based on confusion of the United States Attorney (E. 46-47) to the instructions to the jury as quoted on page 11 of the SUPPLEMENTAL BRIEF OF APPELLEE.

The rules and practices herein complained of are shown to be common practice in the District Court and as such they affect many people, deny due process of law and do much injustice.

REASONS FOR GRANTING THE WRIT

The record shows that the Opinion and Order of the District Court appealed from was based on the testimony of G. C. A. Anderson who was called as a witness by the District Court and testified as a Court witness that before the case was concluded; before the sentence was imposed; before the verdict of the jury; and before the defendant knew he would be convicted; that this petitioner had decided not to appeal the sentence. (E. 5).

The record shows that G. C. A. Anderson testified there was no discussion of fees for an appeal (E. 71-

73), and that immediately after the verdict he asked Judge Chesnut to immediately impose the sentence; although Mr. Morrow at petitioner's request had asked the Court to defer the sentence for a day or two (E. 71). The record shows that Judge Chesnut then paroled petitioner in the custody of C. G. A. Anderson for 18 hours and then imposed the sentence. (E. 70).

The record shows that G. C. A. Anderson then had petitioner sign a paper by which he had petitioner begin the sentence immediately, which Anderson witnessed and filed with the clerk (E. 56-57), and Anderson had petitioner fingerprinted "and that was the incident" (E. 56-57).

The record shows that from that Court testimony the District Court concluded that petitioner's Notice of Appeal (E. 9-10) was not written and mailed to Judge Chesnut on June 6, 1952, but that "it was fabricated long after that date and never mailed to the District Court". (E. 78, 79). The Opinion ignores the fact that in addition to that letter the record shows petitioner wrote three additional letters that same day, June 6, 1952, complaining of injustice, deceit, the fact that the Department of Justice had examined and had rejected respondent's contentions and that an examination of the returns would show that no tax was due or evaded as charged in the false, forged, confused, indictment and asking for an estimate of the costs of the appeal.

The record shows that all FOUR of those letters written immediately after the sentence was imposed on June 6, 1952 were received and read. That none of them were acknowledged and that all of them were withheld from the District Court record for over nine years. (E. 5, 9, 10, 6, 7, 72).

The record shows this was done in accordance with District Court practice as expressed by Judge Chesnut at the time as follows:

> By Judge Chesnut: I receive many such applications within sixty days of the imposition of the sentence and I take the time to read most of them, but this last one, well, I think it was received possibly a day or so before or after the sixty days, but it was not presented to me by counsel, and of course, you would not reasonably expect me to take the initiative in it, to communicate with counsel in order to discuss the matter. (Tr. 9-10-52, pages 17-18).

The record shows that none of the letters of June 6, 1952 were filed in the District Court Records, or acknowledged, and they were kept off the District Court Record for over nine years when one of them was filed by respondent as Exhibit "A" with Respondent's Second Supplemental Brief; another was presented from Judge Chesnut's personal file as Government Exhibit M-1 (E. 6-7); and Judge Chesnut had by then apparently forgotten about the first letter as he testified:

> By Judge Chesnut: To the best of my recollection and belief I did not receive the questioned letter of June 6th from Mr. Funkhouser either then or at any time thereafter and knew not the contents or purported contents thereof until I had read in the appeal of Mr. Funkhouser to the Court of Appeals in his case his statement by I think—I'm not sure whether it was a per curiam statement, but I think it was Judge Sobeloff speaking for the Court, that Mr. Funkhouser had said that he had written me this questioned letter and that the United States Attorney, Mr. Pearson, had produced a letter of June 6th of a different import, which I had received. . . . (E. 34-35).

That may well have been one of the many letters which Judge Chesnut received after the imposition of the sentence which he did not take the time to read; or it might have been mailed to petitioner's wife by one of his clerks or a deputy clerk who claimed and still exercise the right to return papers they prefer not to file in the District Court Records. They still exercise that privilege in the District Court (See Petition for Writ of Mandamus, Ex. A, B, C, D, Case No. 8552).

ARGUMENT

By rejecting, returning and withholding papers mailed to the District Court the Court and its employees have deprived this petitioner of just judicial proceedings and an accurate and full record of the facts in this case.

The Opinion and Order of October 18, 1961 appealed from was based on incomplete and erroneous records and testimony which should be reconsidered in the interest of justice.

The record in all three cases, No. 8094, No. 8498 and No. 8552 shows the court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure as to call for an exercise of this court's power of supervision.

CONCLUSION

The petition for a writ of certiorari should be granted and the case should be set down for argument.

Respectfully submitted,

ROBERT E. FUNKHOUSER,
Pro se,
Davidsonville, Maryland

May 12, 1962